Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Fax: 617/542-2241

Telephone: 202/434-7300
Fax: 202/434-7400
www.mintz.com

Michelle Mundt

Direct Dial Number
202/434-7371
Internet Address
mmundt@mintz.com

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May 27, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

RECEIVED
MAY 27 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-61
Comments of Cellular Telecommunications Industry Association

Dear Ms. Salas:

Enclosed for filing on behalf of the Cellular Telecommunications Industry Association are an original and (4) copies of CTIA's Comments on the Further Notice of Proposed Rulemaking in the above-captioned proceeding, as well as a copy on diskette. We have also enclosed a copy to be date-stamped and returned. Thanks in advance for your assistance.

Sincerely,

Michelle Mundt

Michelle Mundt

Enclosure

DCDOCS: 150805.1 (38d101!.doc)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange	)	
Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g)	)	
of the Communications Act	)	
as amended	)	

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President,
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/785-0081

May 27, 1999

SUMMARY

As CTIA has struggled to respond to the Commission's request for additional information in this proceeding, it has become abundantly clear that attempting to impose the rate integration requirements developed for conventional interstate carriers to the vibrant, competitive wireless marketplace is a hopeless and unnecessary task. As set forth in greater detail below, the wide variety of service and pricing options offered by CMRS providers without regard to state boundaries or traditional exchange areas are not comparable to the "one-size-fits-all" offerings of landline interexchange carriers that gave rise to the rate integration policy and made enforcement of such a policy feasible. Nor is there any equivalent in the conventional wireline interexchange market for the complex structure of roaming agreements, joint ventures, and partnerships that characterize the wireless industry.

Consumers have reaped substantial benefits from the innovative approaches taken by wireless carriers in response to the pressures of the competitive market, including consumers in Alaska and Hawaii. Forcing CMRS providers' services into the framework of rate integration creates a regulatory "Procrustean bed," which CMRS providers must alter themselves to fit or suffer the consequences. Forcing wide area calling plans and roaming to comply with rate integration, as the Further Notice proposes, will chill a wireless carrier's incentive and ability to design innovative offerings that today enable it to differentiate itself from competitors in the marketplace. No carrier could know in advance whether a wide area plan that included less than all of the States and territories would pass muster under the rate integration rules – so carriers may hesitate to offer such plans. Likewise, the obligation to "integrate" roaming charges and the

rates for interexchange calls made by roamers will deprive consumers of one form of price competition.

The benefits, if any, of these regulatory contortions will be slight and the burden on wireless carriers substantial. As in the case of other rules that the Commission has refrained from imposing on wireless carriers, there is no evidence of complaints by consumers against CMRS providers for alleged failures to "integrate" their rates. Rather than completing the process of applying rate integration to the wireless industry, the examination prompted by the Further Notice supports a policy of forbearing from applying rate integration rules to CMRS providers at all.

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of the Communications Act	)	
as amended	)	

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA"),[1/] by its attorneys, hereby submits these comments in response to the Further Notice in the above-captioned proceeding.[2/] The Commission has asked for further comment on several issues regarding the application of rate integration requirements to commercial mobile radio service ("CMRS") providers, including how to apply section 254(g) to wide-area calling plans, services offered by affiliates, and plans that assess local airtime or roaming charges in addition to separate long-distance charges, as well as whether cellular and PCS long distance rates should be integrated.

1/ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, and includes 48 of the 50 largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2/ Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Further Notice of Proposed Rulemaking, FCC 99-43 (rel. April 21, 1999) ("Further Notice").

Just from the questions presented in the Further Notice, it is clear that attempting to fit the competitive wireless industry into the comparatively static policy of rate integration will prove to be difficult if not impossible. Implementation of the rate integration policy with respect to such matters as wide area calling and roaming – hallmarks of wireless service that are not shared by conventional long distance services for which the policy was initially designed – will inevitably frustrate regulators and wireless consumers. Moreover, regulatory uncertainties will dampen the willingness and the ability of wireless carriers to respond to market forces with the kinds of innovative service and pricing plans that the public has come to expect.

In the context of today's competitive wireless marketplace, the costs of imposing this straitjacket on an industry for which it was never designed will impose substantial costs on carriers and consumers with few if any countervailing benefits. Rather than take on the regulatory equivalent of trying to force a square peg into a round hole – a task made manifest by the questions raised in this proceeding – the Commission should forbear from applying rate integration to CMRS providers.

DISCUSSION

CTIA previously asked the Commission to forbear from applying its rate integration rules to CMRS providers.[3/] The Commission denied CTIA's petition, as well as the six petitions filed by other wireless carriers and organizations, because it found that forbearance from rate integration of separately-billed toll charges is not consistent with the public interest prong of the section 10 three-part forbearance test.[4/] In response to requests for forbearance from other

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[3/] Petition for Clarification, Further Reconsideration, and Forbearance of the Cellular Telecommunications Industry Association, CC Docket 96-61, filed Oct. 3, 1997.

[4/] Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of

aspects of its rate integration rule, the Commission concluded that it had insufficient information to determine whether the test for forbearance was satisfied.

As CTIA has struggled to respond to the Commission's request for additional information in this proceeding, it has become abundantly clear that attempting to impose the rate integration requirements developed for conventional interstate carriers to the vibrant, competitive wireless marketplace is a hopeless and unnecessary task. As set forth in greater detail below, the wide variety of service and pricing options offered by CMRS providers without regard to state boundaries or traditional exchange areas are not comparable to the "one-size-fits-all" offerings of landline interexchange carriers that gave rise to the rate integration policy and made enforcement of such a policy feasible. Nor is there any equivalent in the conventional wireline interexchange market for the complex structure of roaming agreements, joint ventures, and partnerships that characterize the wireless industry.

Consumers have reaped substantial benefits from the innovative approaches taken by wireless carriers in response to the pressures of the competitive market. Forcing CMRS providers' services into the framework of rate integration creates a regulatory "Procrustean bed," which CMRS providers must alter themselves to fit or suffer the consequences. Forcing wide area calling plans and roaming to comply with rate integration, as the Further Notice proposes, will chill a wireless carrier's incentive and ability to design innovative offerings that today enable it to differentiate itself from competitors in the marketplace. No carrier could know in advance whether a wide area plan that included less than all of the States and territories would

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Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Memorandum Opinion and Order, FCC 99-347 (rel. Dec. 31, 1998) ("CMRS Reconsideration Order").

pass muster under the rate integration rules – so carriers may hesitate to offer such plans. Likewise, the obligation to "integrate" roaming charges and the rates for interexchange calls made by roamers will deprive consumers of one form of price competition.

The benefits, if any, of these regulatory contortions will be slight and the burden on wireless carriers substantial. As in the case of other rules that the Commission has refrained from imposing on wireless carriers, there is no evidence of complaints by consumers against CMRS providers for alleged failures to "integrate" their rates. Rather than completing the process of applying rate integration to the wireless industry, the examination prompted by the Further Notice supports a policy of forbearing from applying rate integration rules to CMRS providers at all.

I. The Commission Should Forbear from Applying Rate Integration to CMRS Providers

A. Rate Integration Is Not Necessary to Ensure that CMRS Rates and Policies Are Just, Reasonable, and Not Unreasonably Discriminatory

In 1994, when the Commission decided to forbear from applying tariffing requirements to CMRS providers, it concluded that the level of competition in the CMRS industry was sufficient to support forbearance.[5/] Today there is far more vigorous competition in the CMRS industry.[6/] As a result of the Commission's licensing policies, there are five or more mobile telephone providers in forty-four of the top fifty BTA markets, and there are three or more providers in

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[5/] Implementation of Section 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411 at ¶ 138 (1994) ("CMRS Second Report and Order").

[6/] See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Report, 13 FCC Rcd 19746 at 2 (rel. June 11, 1998) ("Third Annual CMRS Competition Report") (recognizing that "substantial progress has been made towards a truly competitive mobile telephone marketplace").

ninety-four of the top one hundred markets. And more than 231.6 million Americans live in markets in which there are at least three and as many as seven wireless providers.[7/] This robust competition prevents CMRS providers from charging unjust or unreasonable rates for wireless service, including interstate, interexchange service. Subscribers dissatisfied with one carrier can easily switch to another.

Alaska and Hawaii are not exceptions to the rule. An article in the Honolulu Star Bulletin in October 1996 characterized the increased competition between wireless carriers in Oahu as a "consumer bonanza."[8/] At the time the article was written, Oahu's two established cellular companies, GTE Mobilenet and Honolulu Cellular, had dropped rates and added services in response to the arrival of VoiceStream, a new PCS carrier. As the article explained: "If you think the battle is intense now, just wait. A new carrier is expected to jump into the fray in a matter of weeks, another is scheduled to start in March, and more are bidding to enter the market. All that bodes well for consumers. As carriers come on line with excess capacity, they'll need a hook to attract new customers. The most likely lure: lower rates, beefed-up services or both." Id. Since the article was written, even more CMRS providers have entered the market in Hawaii, including AT&T Wireless, which offers its Digital One Rate plan with no charges for long distance calls within the 50 states.

Likewise, the Alaska Journal of Commerce has described the surge in wireless competition in Alaska that would follow the entry of Alaska DigiTel and other PCS providers to

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7/ Dr. Robert Roche, CTIA's Who's Where in Wireless: 1999, (1999) at 2.

8/ Rob Perez, Isle Consumers Dialing Up Some Good Deals for Wireless Phones, Honolulu Star-Bulletin, Oct. 21, 1996.

"an already competitive market that boasts above-average cellular phone use."[9/] Another article in the Anchorage Daily News predicted that the presence of Alaska Digitel in Anchorage would "trigger a price and marketing war."[10/] The article also noted that competition in Alaska "mirrors increased competition in wireless markets in the Lower 48 and is likely to get even more heated in the next two years. Anchorage-based General Communications Inc. said it, too, plans to build its own wireless phone facilities in the next year." Id. A third article, describing AT&T Wireless's introduction of its Digital One Rate service in Alaska, emphasized the lower rates for long distance that the plan provides for customers in Alaska.[11/] A spokesman for MACtel noted that the company would respond with its own plan, "probably dropping its rates for this kind of service below AT&T." Id. According to an official with Summit Cellular in Anchorage, the competition among wireless carriers "makes the cola wars appear insipid, like a fight between kids."[12/]

These are not "anecdotal instances" of competition.[13/] In order to respond to the competitive market forces unleashed by the Commission, CMRS providers in Alaska and Hawaii and throughout the country have adopted a wide variety of innovative rate plans that allow consumers to choose the best plan for their lifestyle and calling patterns. For example,

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[9/] Nancy Pounds, Different Kind of Digital Expected to Heat Up Alaska Cellular Wars, Alaska Journal of Commerce, October 5, 1998.

[10/] Eve Rose, Cell-Phone War Heating Up: Alaska DigiTel Wants a Piece of MACtel, AT&T's Pie, Anchorage Daily News, August 30, 1998.

[11/] Eve Rose, Market Cutting Cords: Wireless Phone War Intensifies, Anchorage Daily News, May 8, 1998.

[12/] Nancy Nyback, Cellular Competition Crackles, Alaska Journal of Commerce, September 22, 1997.

[13/] Cf. CMRS Reconsideration Order at ¶ 29.

consumers can choose from among 83 service plans in Washington, D.C., 98 plans in New Orleans, Louisiana, and 57 plans in Racine, Wisconsin.[14/] These same competitive forces have driven CMRS providers to develop innovative ways of pricing long distance service, including flat rate plans that charge a monthly fee for all calls regardless of distance. These extremely popular plans are available in Hawaii and Alaska as well as the continental United States.[15/]

As the Commission has recognized, "[i]n a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power. Removing or reducing regulatory requirements also tends to encourage market entry and lower costs."[16/] Indeed, the Commission frequently has found that the competitive nature of the wireless marketplace renders much traditional carrier regulation unnecessary. In its order adopting rules to prevent "slamming," for instance, the Commission concluded that "[b]ecause CMRS carriers compete with each other to provide the lowest overall rates for their subscribers, they presumably attempt to obtain the lowest rates for toll services from intraLATA toll and interLATA toll carriers."[17/] The

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[14/] For a listing of wireless service plans in a variety of markets, see <http://www.point.com>.

[15/] See, e.g., David Whelan, The Flat-Rate Revolution, Point.com <http://www.point.com/default.asp> (noting that AT&T offers a flat rate plan with no charges for roaming and long distance in the United States, including Hawaii and Alaska); <www.voicestream.com/products/coverage/maps/hi.htm> (describing VoiceStream's Inter-Island Toll Free rate plan that allows subscribers to call anywhere in Hawaii for one flat rate); <http://www.sprintpcs.com/learn/showmapdetail.asp?area=l> (describing Sprint PCS's local calling areas, one of which includes the entire State of Hawaii); <http://www.mactel.com/press/072098.htm> (announcing MACtel's new local calling area, which "means that when you use your MACtel cellular phone to make a call anywhere between Homer and Fairbanks (including Seward, Anchorage, Palmer, Healy, Denali Village, Tok, Delta Junction, and North Pole), you will not pay any long-distance or roaming charges").

[16/] CMRS Second Report and Order at ¶ 173.

[17/] Implementation of the Subscriber Carrier Selection Changes Provisions of the

Commission therefore refrained from imposing slamming rules on wireless providers. More recently, the Commission determined not to impose the full panoply of its "truth-in-billing" requirements on wireless carries at this time, "absent evidence that there is a problem with wireless bills."[18/]

There is no evidence that CMRS providers have charged unjust or unreasonable rates for long distance services. To the contrary, as noted above, the wireless industry has been an innovator in offering postalized and flat rated long distance services. Moreover, in light of the competitive market for wireless services, it is highly unlikely that any CMRS provider would be able to charge unjust or unreasonable rates for long distance service and remain in business. The very wide area calling plans that the Commission would subject to rate integration are proof of the robust competition among carriers to attract and keep customers. Imposing rate integration on these plans is not necessary to prevent unjust or discriminatory pricing. In fact, by stifling competitive responses to market demand, rate integration will disserve consumers.

B. Rate Integration Is Not Necessary to Protect Consumers

The same vigorous competition that prevents CMRS carriers from charging excessive long distance rates or imposing unreasonable terms and conditions on their customers ensures that enforcement of the rate integration requirement is not necessary to protect consumers. Even if the Commission were to forbear from applying rate integration to CMRS providers, providers

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Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334 at ¶ 85 (rel. Dec. 23, 1998).

[18/] In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72 at ¶ 68 (rel. May 11, 1999).

would have to ensure that their long distance rates were "just and reasonable" under section 201 and not "unreasonably discriminatory" under section 202.

Rather than attempting to craft a complicated rate integration rule that addresses each of the many differences between the CMRS and conventional interexchange markets – the essence of the Further Notice – the Commission should forbear from applying rate integration and use sections 201, 202, and 208 to address any individual complaints that arise. To address the concerns of Alaska and Hawaii, the Commission could declare that any plan that excludes either or both of these States is presumptively unreasonable. As past experience demonstrates, complaints about CMRS interstate, interexchange rates will be few and far between.

C. Forbearance From Applying Rate Integration to CMRS Providers Would Be In the Public Interest

The public interest is best served when CMRS providers have the necessary flexibility to tailor their long distance rates and service plans to respond to competitive conditions. This flexibility includes the freedom to determine calling scopes and to negotiate roaming agreements that most effectively permit subscribers to use their wireless phones even when they are outside their providers' service area. Innovative, competitive service is also fostered by the ability of carriers to form joint ventures, partnerships, and other efficient combinations to obtain the necessary investment to innovate and enhance their service offerings. Roaming service is one of the important features wireless carriers offer consumers as a way of differentiating themselves in the competitive marketplace. "Integrating" roaming and interexchange rates risks removing these services as competitive factors.

Forbearance from applying rate integration to wireless carriers is in the public interest because it will promote competition and avoid these diseconomies. Imposing rate integration on

every nuance of interexchange wireless services, by contrast, will create unnecessary regulatory costs and impede the ability of CMRS providers to respond to competitive pressures. If rigidly enforced, rate integration will require CMRS providers to eliminate innovative long distance calling plans, unless they are prepared to offer them on a national basis, and will disrupt existing business relationships, all to the detriment of wireless consumers.

1. Wide Area Calling Plans

Applying rate integration to wide area calling plans will not serve the public interest. Because similar plans do not exist in the conventional, landline interexchange market, there is no easy application of rate integration in this context. Every new wide area plan would be subject to fresh scrutiny, with the outcome largely uncertain. If the Commission requires CMRS providers to offer at least one such plan that serves all locations, as it proposes, it likely will discourage providers from offering such plans anywhere. The economic justification for offering a wide area calling plan in one region of the country does not necessarily support offering the same plan in any other area, or on a nationwide basis. The variety of national, regional, and local plans available to wireless consumers would soon disappear.

The appropriate policy is not to forbear from rate integration just in the case of wide area calling plans. The same disincentives to innovation will arise if rate integration is applied to more traditional calling plans. A provider may effectively be precluded from lowering its long distance rates to attract subscribers in one state if it does not do so in every state where it provides service. Requiring this type of lockstep approach does not serve the public interest in a competitive marketplace.

If the Commission determines not to forbear, despite the strong evidence that forbearance will promote a competitive marketplace and benefit consumers, then it should clarify that rate

integration applies only to separately stated charges for interMTA service. Calls for which there are no separately stated toll charges are, by definition, not telephone toll service,[19/] and therefore rate integration should not apply to these calls.[20/]

2. Roaming Charges

The Commission should not apply rate integration to roaming charges that may be assessed when a long distance call is made from outside a customer's local calling area. Roaming charges are not charges for interstate, interexchange services and generally do not vary with the local or interstate nature of the call. Whether and how to charge for roaming is one means that wireless carriers use to distinguish themselves in the competitive marketplace. Wireless carriers often make business decisions to absorb the costs of roaming in order to offer customers lower rates for wireless service. In fact, one of the selling points of many popular flat rate plans is the absence of separate roaming or long distance charges. But requiring carriers to offer the same roaming charges everywhere could discourage them from lowering roaming charges anywhere. The Commission should not discourage such consumer friendly actions.

3. Application of Rate Integration to Services Offered by Affiliates

The Commission has asked for comment on the degree of affiliation that should trigger rate integration obligations for CMRS providers. The Commission correctly recognizes that adopting an affiliation rule that is too stringent "could be unworkable and adversely effect

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[19/] See 47 U.S.C. § 153(48) (defining "telephone toll service" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service") (emphasis added).

[20/] See also Further Notice at ¶ 13 (noting that some parties have argued that the term interexchange service, which is not defined, should be derived from the definition of "telephone toll service.")

pricing and customer choice, because of the complex nature of the CMRS marketplace."[21/] The Commission expresses its concern, however, that CMRS providers will set up an elaborate system of affiliated companies, each of which would serve a different geographic area, in order to evade the rate integration rules.

Using license areas to determine whether companies are affiliated is a common sense approach that will avoid entangling the Commission and wireless carriers in protracted proceedings regarding ownership and control. Where two entities have separate licenses to serve a market, then the entities should not be considered affiliates and should not be required to integrate their rates. Where two entities share a license to provide service to a single market, there will already be only a single rate for interexchange service.

The Commission should not assume that wireless carriers will use separate affiliates to avoid providing competitive rates for interexchange service in Alaska and Hawaii. As noted above, the facts demonstrate that there is sufficient competition in the wireless industry, including in Alaska and Hawaii, to protect consumers. Under these circumstances, there is a strong presumption against the need for prophylactic regulation. If claims of unreasonable discrimination arise, they can be addressed through the enforcement process.

4. Integration of Cellular and Personal Communications Services

The Commission has asked for comment on whether the interexchange rates for cellular and PCS services should be integrated. The Commission should adopt a common sense rule in this regard as well. If a CMRS provider markets and sells cellular and PCS as two separate services, then the CMRS provider should not be required to integrate the interexchange rates for

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[21/] CMRS Reconsideration Order at ¶ 23.

those services. This result would be consistent with the Commission's decision not to require CMRS long distance rates to be integrated with the long distance rates of an affiliated landline interexchange carriers because they are different services.

Likewise, CMRS providers should not be required to integrate the rates they charge for analog interexchange service with the rates they charge for digital interexchange service. Analog and digital services have different efficiencies and therefore different underlying costs. Requiring the interexchange rates for analog service to be integrated with those for digital service would produce market distortions. If, however, a CMRS provider markets and sells cellular and PCS as an integrated service, indistinguishable to the consumer, then those interexchange rates should be integrated, to the extent any CMRS interexchange rates are required to be integrated.

CONCLUSION

For the foregoing reasons, the Commission should forbear from applying its rate integration requirements to CMRS providers. Attempting to force wireless carriers into a regulatory mold designed for interstate telephone companies will reduce competition and create substantial, continuing regulatory uncertainty. Under the statutory standards of section 10 and 332(c), forbearance is clearly justified.

Respectfully submitted,

Michael F. Altschul /mm

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President,
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/785-0081

May 27, 1999

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CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on this 27th day of May 1999, I caused copies of the foregoing "Comments of the Cellular Telecommunications Industry Association" to be sent to the following by either first class mail, postage prepaid, or hand delivery (*):

James Schlichting*
Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3C224
Washington, D.C. 20554

Jeannine Poltronieri*
Senior Counsel
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3C254
Washington, D.C. 20554

ITS*
1231 20th Street, N.W.
Washington, D.C. 20554

Michelle Mundt

Michelle Mundt

DCDOCS: 150691.1 (389v01!.doc)